No. 92-207

In The
Supreme Court of the United States
October Term, 1992

United States of America,

Petitioner,

v.

Xavier V. Padilla, et al.,

Respondents,

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

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QUESTION PRESENTED

1. Whether the Ninth Circuit Court of Appeals properly follows the mandates of this Court in determining whether an individual possesses a reasonable expectation of privacy under the Fourth Amendment.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

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RESPONSE TO PETITION FOR
WRIT OF CERTIORARI

Respondents respectfully pray that the Petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, filed April 1, 1992 be denied.

STATEMENT OF THE CASE

I. BACKGROUND

The six Respondents - Maria Sylvia Simpson, Donald Lake Simpson, Xavier V. Padilla, Maria Jesus Padilla, Jorge Padilla, and Warren Strubbe - were charged in a single indictment alleging that they conspired to possess cocaine with the intent to distribute (21 U.S.C. §846) and that they actually committed that offense. (21 U.S.C. §841(a)(1)). These charges emanated from the seizure of cocaine from the trunk of a car owned by Donald and Maria Simpson (husband and wife). At the time of the seizure, the Simpson's car was being driven by coconspirator Luis Arciniega.

The District Court held that the seizure and search of the Simpsons' car violated the Fourth Amendment. The court suppressed the evidence as to all six

Respondents. The government appealed.

On appeal, the government conceded that the challenged seizure and search violated the Fourth Amendment, but argued that none of the Respondents had a legitimate expectation of privacy and therefore had no ability to challenge the illegal seizure and search. *United States v. Padilla*, 960 F.2d 854, 858 (9th Cir. 1992). The Ninth Circuit Court of Appeals affirmed the suppression order as to Respondents Maria Simpson, Donald Simpson and Xavier Padilla. Because the record was insufficient to make a determination of whether Maria Jesus Padilla and Jorge Padilla had a legitimate expectation of privacy in the car, the court remanded the case to the district court for further evidentiary hearings on that issue. The court of appeals held that Warren Strubbe lacked

any reasonable expectation of privacy in the car. The court therefore reversed the suppression order as to Strubbe. *Id.* at 863-864.

II. FACTUAL STATEMENT

Virtually all of the evidence against Respondents was obtained as the result of the seizure and search of an automobile owned by Maria Simpson and Donald Simpson, but driven by coconspirator Luis Arciniega. *Id.* at 862. The illegal seizure occurred on September 26, 1989, on Interstate Highway 10 between Tucson and Phoenix, Arizona. A state highway patrol officer stopped the Simpsons' automobile despite the fact that the driver committed no traffic violation. *Id.* at 856. A subsequent search of the trunk revealed packages labeled "pollo", the Spanish word for "chicken". The packages were opened,

revealing cocaine. 5/8/90 Tr. 120; 5/15/90 Tr. 95-96, 103-104.

The government conceded in the Ninth Circuit, and concedes here, that the stop of the Simpsons' car violated the Fourth Amendment. The unrefuted evidence presented in the district court, consisting of documents and avowals from defense counsel, established that the Simpsons and Xavier Padilla were engaged in a sophisticated and coordinated venture to transport the contraband from Mexico, through the State of Arizona and into the State of California.[1] 960 F.2d at 860. The undisputed evidence provides

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[1]Maria Jesus Padilla and Jorge Padilla were also involved in this effort, although - as the Ninth Circuit found - the record is insufficient to allow a determination of their role. Warren Strubbe was initially involved in the venture, but his role ended prior to the challenged seizure. 960 F.2d at 861-862.

a complete, chronological illustration of the facts which demonstrate that the Simpsons and Xavier Padilla possessed a legitimate expectation of privacy under the pertinent decisions of this Court.

A. Maria Simpson

Maria Simpson and her husband, Respondent Donald Simpson, co-owned the automobile that was illegally stopped by an Arizona highway patrolman on the afternoon of September 26, 1989. The cocaine that was seized from the trunk of that vehicle had - for purposes of this case - originally came from Mexico and was being transported at the request of its owner. Mrs. Simpson met with the owner in Mexico shortly before the load of cocaine in question was transported into the United States. In that meeting, Mrs. Simpson complained that she had not been paid for the previous three loads of

cocaine that she had driven into the United States. The owner promised to pay her after the next load was transported. Mrs. Simpson accepted this proposal. *Id.* at 860 n.4.

The contraband at issue was put in the Simpson's car in Mexico on the same day that it was seized. After Ms. Simpson drove it into the United States, she turned her car over to Luis Arciniega, but remained involved in a continuous chain of activity with the vehicle. The car was to be returned to the Simpsons after the delivery was completed. Mrs. Simpson and her husband were then to be paid for their role in the smuggling/transportation venture. *Id.* at 860; 5/30/90 Tr. 73-77, 111-118.

B. Donald Simpson

Donald Simpson was the co-owner of the automobile in question. Immediately

after the illegal traffic stop, but prior to the search of the trunk, the driver, Arciniega, showed the highway patrol officer the insurance certificate which named Mr. Simpson as the owner of the car. 960 F.2d at 856; 5/8/90 Tr. 169-171. Like his wife, Mr. Simpson was to receive payment after the load of cocaine at issue was delivered. The car was also to be returned to him.

In addition, Mr. Simpson was a United States Customs agent and was therefore able to protect the privacy of the contraband in the trunk of his car when it crossed into this country. Telephone records also revealed that Mr. Simpson coordinated and supervised efforts to maintain secrecy as to the illegal cargo. 960 F.2d at 860.

C. Xavier Padilla

Xavier Padilla met with the owner of

the contraband to plan and control its transportation from Mexico through Arizona to its destination in California. Mr. Padilla was ultimately responsible for the load, including on the very day of the stop. Although a resident of Douglas, Arizona, the border town where the car crossed into the United States, Mr. Padilla traveled "virtually along with" the car once it entered this country, and gave directions as to its travel. 960 F.2d at 860; 5/8/90 Tr. 71; 5/30/90 Tr. 69-73, 106-111.

After the Simpson vehicle was illegally stopped and searched by police officers, Arciniega agreed to make a "controlled delivery" of the car in Tempe, Arizona, a suburb of Phoenix. Upon arriving in Tempe, Arciniega placed telephone calls to the Tempe residence of Xavier Padilla's sister. Arciniega spoke

to Mr. Padilla, who was to be called if there were any questions or problems concerning the load. Mr. Padilla sent his wife and brother (Respondents Maria Jesus Padilla and Jorge Padilla) to pick up the Simpsons' car and the contraband. Maria Jesus Padilla and Jorge Padilla arrived in a car that had been rented by Xavier Padilla; he was found at his sister's home a short distance away. 960 F.2d at 856-857.

REASONS FOR DENIAL OF THE PETITION

I. INTRODUCTION

Petitioner alleges that the Ninth Circuit Court of Appeals has turned its back to the rulings of this Court concerning the right to object to searches and seizures under the Fourth Amendment in conspiracy cases. Contrary to Petitioner's allegations, the judges

of the Ninth Circuit have not "sought to evade"[2] the dictates of this Court's opinions, nor have the judges issued rulings which "conflict with the law of every other circuit . . ."[3]

Petitioner's argument is based on a fundamental misinterpretation of Ninth Circuit decisions. The Ninth Circuit has not - as Petitioner claims - granted individual defendants the right to object to searches and seizures based upon their supervision or control of a conspiracy; the Ninth Circuit has granted individuals the right to object based upon their right of supervision or control over property that may arise from a conspiracy. To permit Fourth Amendment challenges simply based upon a person's

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[2]Petition for Writ of Certiorari, at 9.

[3]*Id.* at 14.

role in a conspiracy would, as the court of appeals recognized in the case at bar, be "in clear contravention of holdings of the Supreme Court and this circuit." [Insert citation] The Ninth Circuit has recognized that each case must be decided based on the pertinent evidence as to each individual defendant[4], not by their "role" in a conspiracy. The court has further recognized that an express or implied agreement with others may grant or protect an individual's right of privacy in a particular place or property.[5]

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[4]Petitioner's claim, at 10, that the Ninth Circuit has "manufactured a complex, fact-intensive theory" is groundless. Rights of privacy always have been - and by their very nature must be - decided based on the facts of each case.

[5]Such as when a person entrusts another to deliver a package (*United States v. Jacobsen*, 466 U.S. 109, 114 (1984)), is an overnight guest in

This right of privacy may exist or endure even when the individual is not present[6] or is not able to exclude others. To determine whether a legitimate expectation of privacy exists, courts must look to precautions taken to maintain privacy. *Rawlings v. Kentucky*, 448 U.S. 98, 105 (1980).[7]

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another's home (*Minnesota v. Olson*, 495 U.S. 91, 98-99 (1990)) or shares a work place. *Mancusi v. DeForte*, 392 U.S. 364, 368-369 (1968).

[6]*United States v. Jacobsen*, 466 U.S. at 114; *United States v. Alderman*, 394 U.S. 165, 176 (1969). Under some circumstances, an individual may be present at the location searched, but still lack a legitimate expectation of privacy. *Rawlings v. Kentucky*, 448 U.S. 98, 105 (1980); *Rakas v. Illinois*, 439 U.S. 128, 148 (1978).

[7]Petitioner's claim, at 9, that the Ninth Circuit's finding that Xavier Padilla had a right to object to the seizure in this case violated the dictates of *Rawlings v. Kentucky* is baseless. *Rawlings* involved a gratuitous bailment which arose when the defendant dumped his drugs into an acquaintance's purse as the police arrived. 448 U.S. at

As the following analysis demonstrates, the Ninth Circuit's decisions stand for propositions which flow directly from this Court's rulings. The Ninth Circuit's decisions are also consistent with decisions of the other eleven circuits. There is no reason to grant certiorari; this Court's precedents governing the right to object to governmental searches and seizures are clear and have been properly followed.

II. NINTH CIRCUIT DECISIONS ARE CONSISTENT WITH THE RULINGS OF THIS COURT AND THE OTHER COURTS OF APPEALS

A. THE NINTH CIRCUIT HAS REFUSED TO FIND A LEGITIMATE EXPECTATION OF PRIVACY FOR PARTIES WHO WERE MERELY COCONSPIRATORS OR "JOINT

101-102. In the present case, Xavier Padilla took careful measures to ensure that no intrusion would be made into the locked trunk of the car, including planning the car's travel and virtually traveling along with the car on its route.

VENTURERS"[8]

Petitioner alleges that the judges of the Ninth Circuit have conspired to disregard the Fourth Amendment decisions issued by this Court. This allegation is groundless, as the court of appeals demonstrated in this very case. The Ninth Circuit did not find that three of the coconspirator/joint venturers had a legitimate expectation of privacy; if there were indeed such a blanket rule, all Respondents would have the right to object. 960 F.2d at 863-864.

The court of appeals has never held that a defendant's status as a coconspirator, in itself, supports the

[8]Contrary to Petitioner's assertions, the term "joint venturer" is not a term descriptive of the court of appeals' refusal to follow this Court's decisions, but is simply a term of convenience that the Ninth Circuit has used to depict persons working together toward the commission of a crime.

right to challenge unlawful searches or seizures. *See, United States v. Taketa*, 923 F.2d 665, 672 (9th Cir. 1991); *United States v. Culbert*, 595 F.2d 481, 482 (9th Cir. 1979); *United States v. Mulligan*, 448 F.2d 732 (9th Cir. 1973); *United States v. Haili*, 443 F.2d 1295 (9th Cir. 1971). The Ninth Circuit has ruled, where appropriate, that even a defendant who is present during the search of a confederate may lack the right to contest the admissibility of evidence seized. *United States v. Grandstaff*, 813 F.2d 1353, 1357 (9th Cir. 1987); *United States v. Kovac*, 795 F.2d 1509, 1511 (9th Cir. 1986); *United States v. Medina-Verdugo*, 637 F.2d 649, 651 (9th Cir. 1980)(Kennedy, J.); *United States v. Portillo*, 633 F.2d 1313, 1317 (9th Cir. 1980). The court has reached this conclusion even in cases in which the

defendants have been charged with the possession of the contraband seized from their confederates. *United States v. Aikins*, 946 F.2d 608, 613 (9th Cir. 1990); *United States v. Lockett*, 919 F.2d 585, 588 (9th Cir. 1990); *United States v. Kuespert*, 773 F.2d 1066, 1068 (9th Cir. 1985); *United States v. Mendia*, 731 F.2d 1412, 1414 (9th Cir. 1984).

The court of appeals has consistently followed this Court's mandates regarding expectations of privacy for purposes of the Fourth Amendment. For example, in *United States v. Taketa*, 923 F.2d at 668-669, 672, the court held that Taketa had no legitimate expectation of privacy in his codefendant's office despite the fact that Taketa had an office in the same suite and had free access to the codefendant's office where the crime was

committed. In reaching this conclusion, the court stated:

> To hold that these conspirators all have a legitimate interest in privacy in [codefendant] O'Brien's office would establish the Ninth Circuit's "coconspirator exception" as a true coconspirator exception of general applicability to any person accused of criminal conspiracy. Such a blanket exception to *Rakas* [*v. Illinois*, 429 U.S. 128 (1978),] would contravene holdings of the Supreme Court and this Circuit.

Id. at 672.[9]

B. THE NINTH CIRCUIT DECISIONS CITED BY PETITIONER WERE PROPERLY DECIDED AND DO NOT CALL FOR REVIEW BY THIS COURT

When the Ninth Circuit has addressed questions concerning expectations of privacy in conspiracy or "joint venture"

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[9]Petitioner's intimation, at pages 8 and 10 of the petition, that *Taketa* recognized the existence of a "coconspirator exception" to this Court's Fourth Amendment rulings is therefore misleading.

cases, it has separately analyzed the evidence relating to each party to determine whether that individual's Fourth Amendment interests were affected. The cases relied on by Petitioner, at 8, do not support its position.

1. In *United States v. (George) Johns*, 851 F.2d 1131, 1136 (9th Cir. 1988), the court held that the defendant had the right to object to the search of a rental storage unit which was in the codefendant's name. The court properly reached this conclusion because the defendant established that he paid part of the rental fee and co-owned the property inside the unit.

2. In *United States v. Broadhurst*, 805 F.2d 849, 850 (9th Cir. 1986), the court analyzed the individual privacy interests of six defendants in a remote residence which housed a marijuana

growing business. Each defendant was found to have standing because he or she lived on the premises, worked on the premises or owned the premises. *Id.* at 851-852. This decision conforms to the well established proposition that owners and employees may possess a legitimate expectation of privacy in their work place. *See, e.g., Mancusi v. DeForte*, 392 U.S. 364, 368-369 (1968). The fact that the search revealed that the business was illicit cannot, of course, defeat the owners' and employees' right to object to the search. *See* Petition for Writ of Certiorari at 12 n. 5.

3. *United States v. Quinn*, 751 F.2d 980, 981 (9th Cir. 1984), *cert. granted*, 474 U.S. 900 (1985), *cert. denied*, 475 U.S. 791 (1986), raised the question of the right to object to the search of a boat. The Ninth Circuit held

that, although Quinn was not on the boat at the time of the search, he had a legitimate expectation of privacy because he owned the boat and the contraband on it, the search occurred immediately after he left the boat, and he took extensive precautions to protect his privacy interests in the boat.

4. In *United States v. Pollock*, 726 F.2d 1456 (9th Cir. 1984), the defendant was found to have a reasonable expectation of privacy in the house where an illicit drug laboratory was found. Although Pollock did not own or live on the property, he moved the laboratory into the house with the owner's permission, took steps to maintain privacy, worked in the laboratory, and was present when the search occurred. *Id.* at 1465.

5. In *United States v. (Lyle) Johns*, 707 F.2d 1093 (9th Cir. 1983), *reversed on other grounds*, 469 U.S. 478 (1985), two pilot/defendants turned packages containing marijuana over to their coconspirator/employees for delivery. The pilot/defendants presented evidence that the marijuana belonged to them and that the coconspirator/employees would not be paid until the packages were delivered. The court concluded that the pilot/defendants had the right to object to the search of the packages due to their retained interest in them.[10] *Id.* at 1099-1100. This case comports with

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[10]The Ninth Circuit has held that conspirators retain no legitimate expectation of privacy when they demonstrate no continuing interest after turning contraband over to another. *United States v. Mendia*, 731 F.2d at 1414; *United States v. Culbert*, 595 F.2d at 482; *United States v. Turner*, 528 F.2d 143, 164 (9th Cir.), *cert. denied*, 423 U.S. 996 (1975); *United States v. Toliver*, 433 F.2d 867, 869 (9th Cir. 1970).

the settled principle that the owner of a package maintains a legitimate expectation of privacy in a package in transit. *United States v. Jacobsen*, 466 U.S. at 114.

6. Finally, in *United States v. Perez*, 689 F.2d 1336 (9th Cir. 1982), the defendants hired a driver and truck to transport their contraband, took steps to ensure the privacy of the contraband, and traveled with the truck. Under these circumstances, the court of appeals held that the defendants possessed a legitimate expectation of privacy in the contraband hidden in the truck.

Petitioner cannot direct this Court to any case - for none exist - in which the Ninth Circuit has found a party's status as a coconspirator to support a legitimate expectation of privacy in a place searched or an item seized. The

Ninth Circuit has found expectations of privacy in a joint venturer only when that individual presented evidence demonstrating control over the place searched or the property seized.[11]

C. THE OTHER CIRCUITS HAVE DECIDED "JOINT VENTURE" CASES CONSISTENTLY WITH THE OPINIONS OF THE NINTH CIRCUIT

The courts of appeals of the other eleven circuits have been called upon to decide cases which raise expectation of privacy issues for coconspirators or for

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[11]Petitioner also complains, at 11 n.3, that the Ninth Circuit's decisions serve to free minor defendants while permitting the worst offenders to go free. This is simply untrue. The court of appeals has consistently focused on the issue of privacy interests; in some cases this may be a mere courier, while in others it will be a kingpin. In any case, the Fourth Amendment is designed to protect the members of a free society from arbitrary intrusions by government, not to determine the appropriate punishment of various players in a criminal conspiracy.

persons who rely on others to protect their belongings. In those cases, the courts have reached conclusions that are consistent with the decisions of the Ninth Circuit.

1. In *United States v. Kye Soo Lee*, 898 F.2d 1034, 1035 (5th Cir. 1990), two defendants were stopped while driving a rental truck in Louisiana. The defendant who actually rented the truck was in New York at the time. The court held that all three defendants demonstrated a legitimate expectation of privacy in the truck and its contents. *Id.* at 1038.

a. The defendants in the truck denied renting the truck, owning the contents, or being able to unlock the

cargo area of the truck.[12] The court held that the defendants could object under the Fourth Amendment because the renter of the truck and owner of the cargo entrusted them with the property.

b. The defendant who was thousands of miles away at the time of the stop and search had the right to object because he rented the truck, owned the contents, and locked the cargo area, giving keys only to the other defendants.

2. In *United States v. Most*, 876 F.2d 191, 192 (D.C. Cir. 1989), the defendant left a plastic bag with a store clerk, with the understanding that he would return for it later. The court held that he retained a legitimate

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[12]Shortly after the stop, however, the investigating officer found that these defendants did have a key that would open the lock on the cargo area. *Id.* at 1036.

expectation of privacy in the bag. *Id.* at 198.

3. In *United States v. Dotson*, 817 F.2d 1127, 1134 (5th Cir. 1987), the defendant challenged the search of his car which he had loaned to a codefendant. The court found that the defendant had not forfeited his expectation of privacy in the car[13] because the loan was for a limited period of time. *Id.* at 1135.

4. In *United States v. Freire*, 710 F.2d 1515, 1519 (11th Cir. 1983), the defendant successfully argued that he held a legitimate expectation of privacy in a briefcase despite the fact that he turned it over to a codefendant eight hours before the challenged search.

5. In *United States v. Allison*,

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[13]The court reached this conclusion despite the fact that the title to the car was not in the defendant's name.

619 F.2d 1254, 1256 (8th Cir. 1980), the defendants were labor union officials who were under investigation for embezzling union funds. Defendants Allison and Greer, both of whom worked at the union office, successfully argued that they had a reasonable expectation of privacy in records that were kept in a union storeroom. *Id.* at 1260.

6. In *United States v. Lonabaugh*, 494 F.2d 1257, 1259 (5th Cir. 1973), acting on an informant's tip, police officers watched the defendant and a companion enter an airport with two suitcases. The defendant purchased an airline ticket and checked the luggage. He gave the ticket and claim checks to his companion. When confronted by authorities, the defendant admitted that the luggage belonged to him. Despite the fact that the defendant gave up custody

and control, the court held that he maintained a legitimate expectation of privacy in the luggage. *Id.* at 1262.

7. In *United States v. Eldridge*, 302 F.2d 463, 464 (4th Cir. 1962), the court held that the defendant did not give up his right to object to a search of his car trunk despite the fact that he had loaned the car - and the trunk key - to a friend who had the car at the time of the search.

Under any name, and in any circuit, individuals can establish a reasonable expectation of privacy, not only as a result of their personal efforts, but also by enlisting the assistance of others.

D. THE CASES CITED BY PETITIONER FROM OTHER CIRCUITS WOULD HAVE BEEN DECIDED NO DIFFERENTLY BY THE NINTH CIRCUIT

Petitioner has obviously conducted

extensive research in an effort to locate federal decisions that will convince this Court that those decisions would have been decided differently under the Ninth Circuit's supposed "joint venture" rule. While some inconsistencies are to be expected in the application of any fact-based doctrine, Petitioner's effort fails as to each case. None of the cases cited in the petition, at 14-16, involved facts such as those presented here. None of those cases involved defendants who owned the place searched, had a proprietary interest in the property seized, or engaged in continuous efforts to protect the property from intrusions by government officials.

1. In *United States v. Kiser*, 948 F.2d 418 (8th Cir. 1991), *cert. denied*, 112 S.Ct. 1666 (1992), the defendant sought to challenge the search of an

employee's car. The employee was transporting the defendant's cocaine in Florida while the defendant was in Iowa. *Id.* at 421, 423. There is no indication in the opinion that the defendant gave his courier any directions regarding travel, maintained contact with him, or even knew his location. The court correctly concluded that the defendant had no legitimate expectation of privacy in the employee's car. *Id.* at 424.

The *Kiser* opinion does contain excessively broad language indicating that an employer cannot assert a Fourth Amendment privacy right through an employee's acts. *Id.* This cannot be true. Certainly, an attorney's absence does not defeat a legitimate expectation of privacy in his or her office when the office is occupied by a secretary or paralegal. *Kiser* also stated, in dicta,

that it would not follow the Ninth Circuit's "joint venture/co-conspirator exception to the standing rules announced by the Supreme Court." *Id.* As is demonstrated in section II(B), above, the Ninth Circuit has followed the dictates of this Court in applying the Fourth Amendment to the cases before it.

2. In *United States v. Manbeck*, 744 F.2d 360, 373-374 (4th Cir. 1984), *cert. denied*, 469 U.S. 1217 (1985), the court held that defendants who were not present at the time that trucks containing contraband were searched could not assert a sufficient privacy interest solely by claiming that they would profit from the sale of the marijuana. The Ninth Circuit has never held that a future financial interest from contraband, without some control over the property, can provide an expectation of

privacy under the fourth amendment.

3. The Eleventh Circuit, in *United States v. Brown*, 743 F.2d 1505, 1507-1508 (11th Cir. 1984), held that a defendant could not possess a legitimate privacy interest in contraband strapped to his codefendant's body. In reaching this conclusion, however, the court specifically pointed out, "Unlike a house, a hotel room, an automobile or a briefcase, one cannot acquire a right to exclude others from access to a third person." *Id.* at 1507. The court clearly limited its holding to the facts before it and did not discuss any expectation of privacy that might be created through an agreement with a third party in other circumstances.[14]

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[14]Petitioner's statement, at 15, that the eleventh circuit "refused to recognize 'joint venture standing'" in *Brown* is therefore, at best, a gross

4. In *United States v. Soule*, 908 F.2d 1032, 1036 (1st Cir. 1990), the court simply and properly held that a defendant had no right to object to a search of a truck when he was not present, had no interest in the truck, and had no interest in the contents.

5. In *United States v. DeLeon*, 641 F.2d 330, 337 (5th Cir. 1981), the defendant, after unsuccessfully arguing that there was insufficient evidence to convict, attempted to object to the admission of contraband seized from a coconspirator's car in the defendant's absence.[15] The opinion reveals no evidence that the defendant was nearby or

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overstatement.

[15]The defendant failed to raise this issue in the trial court; the court of appeals therefore only reviewed the Fourth Amendment claim under the plain error standard. *Id.* at 337.

attempted to exert any control over the contraband. The opinion gives no indication that the defendant claimed an ownership interest in the seized property.

6. The mere fact that the defendants stored stolen property in a particular building - over which they had no control - did not give them the right to object to a search of that building. *United States v. Galante*, 547 F.2d 733, 737 (2d Cir. 1976).

7. In *United States v. Lisk*, 522 F.2d 228, 229 (7th Cir. 1975) (Stevens, J.), *cert. denied*, 423 U.S. 1078 (1976), the defendant asked a friend to keep a bomb for him until he asked for it back. The bomb was placed in the trunk of the friend's car. The defendant had no interest in or control over the friend's car, nor did the defendant make any

effort to protect the car from law enforcement intrusions. The court held that the defendant did have a right to object to the seizure of his property (the bomb), but had no privacy interest in the car. *Id.* at 330.

These cases all stand for the simple proposition that an individual cannot maintain a legitimate privacy interest in property when he or she relinquishes control without taking steps to protect the property from unwanted scrutiny. The Ninth Circuit has never held otherwise.

III. THE COURT OF APPEALS CORRECTLY DECIDED THE CASE AT BAR

Petitioner asserts, at 11, that the Ninth Circuit decided the present case with regard to Maria Simpson, Donald Simpson and Xavier Padilla based upon "their status as principals in the joint venture." Petition for Writ of

Certiorari, at 11. In light of the fact that, as demonstrated above, the court of appeals has never decided this or any other case by focusing only on the defendants' status as joint venturers, Petitioner's argument obviously must fail. Further, in this particular case, the three Respondents at issue had far greater privacy interests than mere coconspirators.

The petition, at 11 n. 4, concedes that the Simpsons owned the car that was stopped. Petitioner also appears to concede, at 12, that the Simpsons and Xavier Padilla held a possessory interest in the contraband found in the trunk of the Simpson's car. Petitioner ignores the fact that both the Simpsons and Xavier Padilla were directly involved in shepherding the car from Mexico to Arizona, and that Xavier Padilla was in

charge of decisions as to who would drive the car, what route it would take, when it would travel, and was to resolve any problems that arose. This is not a case in which contraband was simply passed from one conspirator to another, or sold from one individual to another. This is a case in which, through agreement among the parties, care was taken to protect the cargo as it traveled through Arizona. Certainly, there is a far more substantial basis to find a right of privacy when cargo is so carefully protected as here, than in a case in which an individual sends a package by a messenger service. *Compare United States v. Jacobsen*, 466 U.S. at 114. Unless the Fourth Amendment protects the privacy of businesses operated in a coordinated fashion of this kind, there will be no protection for any commercial shipping -

legitimate or otherwise - from arbitrary governmental intrusion.

IV. THIS CASE PRESENTS A POOR VEHICLE FOR REVIEW OF DECISIONS BY THE NINTH CIRCUIT CONCERNING THE RIGHT TO OBJECT UNDER THE FOURTH AMENDMENT

Even should this Court wish to examine the Ninth Circuit's treatment of privacy interests of coconspirators under the Fourth Amendment, this case is an inappropriate one due to its facts. First, Petitioner recognizes, at 16 n. 7, that this Court previously granted certiorari in *United States v. Quinn*, 751 F.2d at 981, but declined to decide the case because the issue was complicated by Quinn's ownership of the boat in question. The same problem exists here due to the Simpsons' ownership of the car.

Secondly, as the Ninth Circuit panel recognized, the record is inadequate to

permit a reasoned decision as to the expectation of privacy held by Respondents Maria Padilla and Jorge Padilla. Respondent Warren Strubbe's claim of a privacy interest was rejected by that panel.

Finally, and most importantly, the Ninth Circuit correctly decided the that Maria Simpson, Donald Simpson and Xavier Padilla had a legitimate expectation of privacy in the Simpson's car and its cargo under settled principles announced by this Court. In addition to their interests in the car and the contraband, these individuals took measures, similar to those undertaken by any businessperson who is shipping valuable property, to protect the property.

CONCLUSION

The decisions of this Court have set

reasonable standards by which the protections of the Fourth Amendment can be enforced. Those standards provide trial court's with sufficient guidance, while remaining sufficiently flexible, to determine whether a defendant holds a legitimate expectation of privacy in a place searched or in property seized. While some disparity will occur under any fact-based system of applying the law, no better alternative exists. Certainly, this Court would never accept a suggestion that no person may claim the protection of the Fourth Amendment by arranging for their privacy with other persons or that no such protection exists unless the property owner is present. Such a ruling would permit unscrupulous law officers to search our cars and ransack our homes and offices whenever we were absent. The parameters of the

Fourth Amendment do not depend upon whether one chooses to go out to dinner or to remain home.

Petitioner asks this Court to grant certiorari based upon the erroneous belief that the judges of the Ninth Circuit Court of Appeals are ignoring clear Fourth Amendment law. No such disobedience from this Court's rulings has occurred. The petition for certiorari must therefore be denied.

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